

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: BRC Dayton LLC)
Map 96, Control Map 96, Parcel 41.10) Rhea County
Commercial Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$667,800 | \$2,654,600 | \$3,322,400 | \$1,328,960 |

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on December 11, 2006 in Dayton, Tennessee. In attendance at the hearing were registered agent Richard Wheeler and Julene Purser Morgan, Rhea County Property Assessor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 15.53 acre tract improved with a 112,000 square foot shopping center that was 100% vacant on the relevant assessment date of January 1, 2006. Subject property is located at 200 Able Drive in Dayton, Tennessee. The primary tenants in the center were previously Wal-Mart and Ingles.

The taxpayer contended that subject property should be valued at \$300,000. In support of this position, Mr. Wheeler argued that the November 23, 2005 sale of subject property for \$300,000 constitutes the best evidence of value.

The assessor contended that subject property should be valued at \$2,658,750 - \$2,791,480. In support of this position, the assessor introduced vacant land sales which she maintained support the current land appraisal of \$667,800. Ms. Morgan recommended that the improvements be depreciated an additional 20% - 25%. Ms. Morgan maintained that the improvements still have significant contributory value as reflected by the fact they are being renovated and occupied by new tenants. Ms. Morgan also noted subject property previously sold on July 28, 2000 for \$4,544,615.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50

and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$2,700,000 based upon the assessor's proof.

Since the taxpayer is appealing from the determination of the Rhea County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the November 23, 2005 sale of subject property for \$300,000 cannot be adopted as the basis of valuation for any of several reasons. First, one sale does not necessarily establish market value. As observed by the Arkansas Supreme Court in *Tuthill v. Arkansas County Equalization Board*, 797, S. W. 2d 439, 441 (Ark. 1990):

Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

The administrative judge finds that the sales introduced by the assessor indicate subject land alone has a value for above the \$300,000 paid for subject property. Second, the sale actually involved the subject property and a 160,000 square foot shopping center in Rockwood which were purchased for \$1,300,000 with \$300,000 allocated to the subject property. Third, Mr. Wheeler was unsure whether subject property was even listed for sale with a broker. Fourth, Mr. Wheeler did not introduce a cost approach, income approach or additional sales to substantiate his contention of value.

Based upon the foregoing, the administrative judge finds the assessor could have successfully moved for a directed verdict which would have resulted in the affirmation of the current appraisal. Absent additional evidence from the taxpayer, the administrative judge finds Ms. Morgan's recommended value more than reasonable.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$667,800 | \$2,032,200 | \$2,700,000 | \$1,080,000 |


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 4th day of January, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Richard Wheeler
Julene Purser Morgan, Assessor of Property